

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
MCC Iowa LLC	)	CSR-6323-E
	)	CSR-6328-E
Petitions for Determination of Effective	)	
Competition in Forest City (IA0151), Clear Lake	)	
(IA0076) and Ventura (IA0393), IA	)	
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**MEMORANDUM OPINION AND ORDER**

**Adopted: September 24, 2004**

**Released: September 28, 2004**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. MCC Iowa LLC ("Mediacom") has filed with the Commission two petitions pursuant to Section 76.7, 76.905(b)(4) and 76.907 of the Commission's rules seeking a finding of effective competition in Forest City, Clear Lake and Ventura, Iowa ("the Communities").<sup>1</sup> Mediacom alleges that its cable systems serving the Communities are subject to effective competition pursuant to Sections 623(a)(2) and 623(1)(1)(D) of the Communications Act of 1934, as amended, ("Communications Act"), and the Commission's implementing rules, and are therefore exempt from cable rate regulation.<sup>2</sup> Mediacom also seeks the revocation of the certification of Forest City to regulate basic cable rates.<sup>3</sup> Mediacom claims the presence of effective competition in the Communities stems from the competing services provided by Forest City Telecom, Inc. ("Forest City Telecom") and Clear Lake Independent Telephone Company ("Clear Lake Telephone"), local exchange carriers ("LECs") that also provide franchised cable service in the Communities.<sup>4</sup> No oppositions to the petitions were filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>5</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>6</sup>

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(4) & 76.907.

<sup>2</sup> 47 U.S.C. §§ 543(a)(2) & 543(1)(1)(D); 47 C.F.R. 76.905.

<sup>3</sup> Forest City Petition at n.1.

<sup>4</sup> Petitions at 2.

<sup>5</sup> 47 C.F.R. § 76.906.

The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>7</sup> Based on the record in this proceeding, Mediacom has met this burden.

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a LEC or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.<sup>8</sup> The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator's service in the franchise area.<sup>9</sup> The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.<sup>10</sup>

4. Mediacom operates cable television systems in each of the Communities for which it seeks a determination of effective competition and qualifies as the incumbent cable operator within those Communities for purposes of the "LEC" effective competition test.<sup>11</sup> Mediacom provided information showing that the State of Iowa has granted certificates for the provision of telephone exchange and local exchange access services by Forest City Telecom in Forest City and by Clear Lake Telephone in Clear Lake and Ventura.<sup>12</sup> Therefore, Forest City Telecom and Clear Lake Telephone qualify as LECs for purposes of the LEC effective competition test.<sup>13</sup>

5. Forest City Telecom and Clear Lake Telephone both received local cable franchises from Forest City and Clear Lake and Ventura, respectively, authorizing them to provide cable programming services throughout the respective Communities.<sup>14</sup> Mediacom demonstrated that the franchise areas of both Forest City Telecom and Clear Lake Telephone in the Communities are essentially the same as its own franchise area, the LECs' cable plants cover most of their respective franchise areas, and their cable plants substantially overlap Mediacom's service areas.<sup>15</sup> In addition to holding franchises for the

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<sup>6</sup> 47 C.F.R. § 76.905.

<sup>7</sup> See 47 C.F.R. §§ 76.906 & 907(b).

<sup>8</sup> 47 U.S.C. § 543(1)(1)(D); see also 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the "LEC" effective competition test.

<sup>9</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

<sup>10</sup> *Id.*

<sup>11</sup> Petitions at 3 & Exhibits C.

<sup>12</sup> *Id.* at 2 & Exhibits A.

<sup>13</sup> See 47 U.S.C. § 543(1)(1)(D).

<sup>14</sup> Petitions at 4 & Exhibits F.

<sup>15</sup> *Id.* at 3 & Exhibits C & D. Exhibits C & D attached to both pleadings contain Declarations from Kent Studer, an

provision of cable service within the Communities, the LECs have distributed press releases, local advertising, and marketing materials within the Communities so that potential cable subscribers in the Communities are broadly aware of the availability of its cable services and need only to contact the LECs to obtain service.<sup>16</sup>

6. The marketing materials of Forest City Telecom and Clear Lake Telephone show that the cable systems offer over 60 channels and 90 channels, respectively, of video programming that includes non-broadcast programming services such as MSNBC, CNN and ESPN, as well as a complement of local television broadcast stations.<sup>17</sup> Based on this record, we find that both Forest City Telecom and Clear Lake Telephone's complement of programming services compares with the programming available on Mediacom's systems<sup>18</sup> and are sufficient to satisfy this aspect of the LEC effective competition test.<sup>19</sup> Mediacom also provided evidence that there are no regulatory, technical or other impediments to the provision of service by either Forest City Telecom or Clear Lake Telephone within the Communities, and that the LECs are able to provide cable service that substantially overlaps Mediacom's service.<sup>20</sup> Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence to demonstrate that its cable systems serving the Communities are subject to effective competition.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom for determinations of effective competition in Forest City, Clear Lake and Ventura, Iowa **ARE HEREBY GRANTED** and the certification of Forest City, Iowa to regulate basic cable rates **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>21</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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Advanced Technician for Mediacom in Forest City, Clear Lake and Ventura, Iowa, along with Mediacom service area maps as well as service area maps for both LECs. In Exhibit C in both petitions, Mediacom's representative attests to the fact that the attached maps identifying Mediacom's service area within the boundaries of the Communities are based on data derived from Mediacom's cable plant maps. In Exhibit D in both petitions, Mediacom's representative attests to the fact that the LECs' cable service area within the boundaries of the Communities are based on information provided by employees of the LECs.

<sup>16</sup>*Id.* at 3 & Exhibits E.

<sup>17</sup>*Id.* at 6 & Exhibits G.

<sup>18</sup>*Id.* & Exhibits H.

<sup>19</sup>*See* 47 C.F.R. § 76.905(g).

<sup>20</sup>Petitions at 4 & Exhibits F.

<sup>21</sup> 47 C.F.R. § 0.283.